

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39889
Docket No. CL-40055
09-3-NRAB-00003-070336
(07-3-336)**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13183) that:

- 1. Carrier violated the terms of the Agreement, including but not limited to Rule 1, when on February 15, 2006, it removed work covered by the TCU Scope Rule, specifically, customer calls concerning delayed cars, lost cars, bad orders, location of cars and etc., that is assigned to the Customer Service Operations Clerks in the Customer Service Center (CSC) at Jacksonville, FL, and assigned it to the Managers and other employees on the Customer Service Team at Jacksonville, FL.**
- 2. Carrier shall now compensate the senior available employees at the Jacksonville CSC (as further described in paragraph 3 herein) commencing on February 15, 2006, under the provisions of Rule 18, eight (8) hours at time and one-half, at the rate he or she would have earned if called properly (\$174.64 plus any general rate increases applicable); at the punitive rate of \$261.96, or his or her guaranteed rate if higher, for each day beginning February 15, 2006 and continue until this violation is corrected, to be determined by a joint check of Carrier’s records. Carrier is**

thus placed on notice to retain such records until this claim is resolved.

3. The remedy requested herein shall commence on February 15, 2006, with the first shift of the Jacksonville CSC, and additionally at the first occurrence on February 15, 2006, or thereafter, at any and all other CSC Pools where such violation occurs, and shall be payable on a continuous basis for each subsequent shift and on each subsequent day that the violation is repeated. Individual payments shall be made on each date and on each shift to the senior available employee in each Pool that is usually and customarily assigned to handle the duties of customer calls concerning delayed cars, lost cars, bad orders, location of cars and etc. A joint check of the Carrier's records to determine all above-mentioned violations is also sought as a remedy of settlement. Carrier is again placed on notice to retain such records from February 15, 2006 until this claim is resolved.
4. This is an all-inclusive claim covering each and every instance beginning on February 15, 2006, and subsequent thereto, wherein Carrier employees on the Customer Service Team other than the Jacksonville CSC, perform the work of handling customer calls concerning delayed cars, lost cars, bad orders, location of cars and etc."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The instant dispute arose after the Carrier issued Operations Bulletin No. 05-2006. The thrust of the bulletin was to announce the requirement, effective February 15, 2006, that all Carrier customers would have to obtain a User ID and PIN number to contact the Customer Service Team (Problem Resolution) concerning delayed cars, lost cars, bad orders, location of cars, and similar problems. Page 2 of the bulletin included a series of Frequently Asked Questions to be used as a script to respond to customer questions about the new requirement for an ID and PIN. The bulletin also asked that all problem resolution calls be transferred to an internal extension where the call would be handled by the Customer Service Team.

As noted in the Statement of Claim, the Organization contends that the Carrier improperly removed bargaining unit work in violation of the parties' Scope Rule which reserves positions or work. In support of its position, the Organization included 200 statements from employees attesting to the fact that they were instructed ". . . to no longer have telephone contact with the customer but instead, transfer any customer's call to number 7515. . . ."

In contrast, the Carrier's position is that the disputed work is and has been properly performed by the Customer Service Team since the forging of an Agreement with the Organization to that effect dated January 11, 2000. The Carrier also challenges the 200 employee statements as being mere perfunctory form letters that are inaccurate and attempt to circumvent the January 11, 2000 Agreement. The Carrier also provided statements from two Managers attesting that the disputed work has been performed by Customer Service Team personnel since the implementation of the January 11, 2000 Agreement and that the bulletin in question did not produce any changes in work methods beyond the requirement that each customer have a User ID and PIN.

In addition to the foregoing items, the record contains the January 11, 2000 Agreement as well as a November 30, 1999 letter to the Carrier from the General Chairman at the time concerning the Agreement contemplated. The letter referenced a discussion on November 11, 1999 and explained the General Chairman's understanding of that discussion. The contemplated Agreement would consolidate two groups into one larger group and relocate them to office space that would accommodate them. One component was fully covered by the parties' Agreement. The other component was non-contract. The consolidated group was to become all Agency Fee Payers. Significantly, the General Chairman's letter described his understanding of the work practices of the two groups prior to consolidation. One performed proactive telephone contact with customers whereby the employees would place outbound calls to customers to provide problem resolution assistance to them. The other group performed reactive telephone contact whereby they would provide problem resolution service to customers calling inbound to the Carrier. Aside from the General Chairman's understanding about this proactive-reactive distinction, his letter contained this sentence:

"As discussed, both groups perform the same functions of tracing cars and assisting shippers and customers."

Although the Letter of Agreement made reference to the General Chairman's letter of November 30, 1999, the Carrier's author of the Letter of Agreement was not the same person to whom the General Chairman wrote his letter. Our review of the record before the Board does not reveal that the General Chairman ever received any confirmation from the person to whom he wrote about the work practices that existed in the two work groups prior to the consolidation, nor any work practices that would be followed by the combined group after consolidation.

The Letter of Agreement also references a December 14, 1999 conversation between the Carrier's author and the General Chairman. However, our review of the record shows it to be entirely silent about the content of the referenced conversation.

In light of the foregoing factors, we cannot ignore the fact that the January 11, 2000 Letter of Agreement was signed by all parties without containing any

restrictions whatsoever upon the work to be performed or the methods to be used by the combined group to provide problem resolution services after its consolidation.

The record does not contain any comparable evidence from either of the two Organization signatories to that Agreement in opposition to the Carrier's position.

Given the state of the record before the Board, we must find that the Organization failed to prove that the parties' Agreement was violated as alleged in the claim. The claim, therefore, must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 31st day of July 2009.